

**SURVEY ON MEASURES TAKEN TO COMBAT BRIBERY  
IN OFFICIALLY SUPPORTED EXPORT CREDITS – [BRAZIL(SAIN/ABGF)] RESPONSES**

**SECTION I – GENERAL MEASURES TO DETER BRIBERY**

**Question 1**

Do you inform exporters and, where appropriate, applicants, requesting official export credit support about the legal consequences of the bribery in international business transactions under your national legal system including your national laws prohibiting such bribery?

Yes, always       Yes, sometimes (*please provide details below*)       No

*If yes:*

a) Please indicate the method(s) by which this is accomplished:

- text in the application form
- a stand-alone document is provided to applicants
- text included in a stand-alone document submitted by applicants
- text in the general conditions of cover (*for export credit insurance and guarantees*)
- text in the credit agreement
- information posted on the organisation's web site
- customer publications (e.g. brochures, handbooks)
- other (please elaborate):

Forms for the exporter and the lender are being applied for new transactions since 1<sup>st</sup> March 2016.

Dissemination at meetings and events with exporters, banks and governmental agencies, among others, which will be intensified in the context of the new compliance procedures.

Page on the Secretariat for International Affairs (SAIN) website:

<https://www.sain.fazenda.gov.br/links/compliance-no-sce>.

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- b) Please provide the text used to describe the legal consequences of the bribery in international business transactions under your national legal system including your national laws prohibiting such bribery:

**Statement of Commitment for Exporters**

[the Exporter:]

I) it is aware of Brazil's adherence to the OECD Convention (Convention on Combating Bribery of Foreign Public Officials in International Commercial Transactions, signed in Paris on 17 December 1997), and enacted into Brazilian law through Decree 3678 of 30 November 2000;

II) it is aware that articles 337-B and following of the Brazilian Penal Code establish crimes against Foreign Public Administration, including corruption of foreign public official and traffic of influence, both in international commercial transactions;

III) it is aware that Law n. 12,846 of August 1<sup>st</sup>, 2013 provides for the objective liability, in administrative and civil spheres, of legal entities for the practice of acts against national or foreign public administrations;

VI) it is aware that in the event the Exporter or any person acting on behalf of the enterprise, in its interest or benefit, is convicted for practicing any of the crimes against foreign public administration established in articles 337-B and following of the Brazilian Penal Code, or held liable, civil or administratively, for the commission of the acts provided by Law n. 12,846/2013, the Exporter shall be subject to loss of export financing, from the National Economic and Social Development Bank – BNDES, from the Export Financing Program - PROEX run by the Bank of Brazil S/A, in its capacity as agent of the National Treasury and from the Export Credit Insurance Coverage from the Export Guarantee Fund – FGE and for a period of five (5) years from the sanction judgment regarding new export transactions;

**Forms for the Exporter and for the Lender**

1. The Brazilian government is committed to combat Acts of Corruption; Crimes Committed by Individuals Against a Foreign Public Administration Crimes of “[Money] Laundering” and Concealment of Properties, Rights and Values; and/or Acts of Terrorism Financing (defined in paragraph 2) due to obligations with international instruments and international institutions recommendations, recommended and complemented by the national legislation (Appendices A and B). This commitment applies to the insurance and the financing with official support, what motivates the requirement that the exporter fills and signs this Form for the Exporter (Form).

Comments/clarifications/additional information related to the answers provided above:

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These fragments are part (i) of the Statement of Commitment for Exporters, translated by the Office of the Comptroller General (*Controladoria-Geral da União – CGU*); and (ii) of the forms for the exporter and for the lender, which are being applied for new transactions since 1<sup>st</sup> March 2016.

The Statement of Commitment for Exporters is adopted by the three export credit agencies (Brazilian Development Bank – BNDES; Brazilian Guarantee Agency– ABGF; and Bank of Brazil). According to the Resolution no. 81/2014 of the Brazilian Chamber of Foreign Trade, the Brazilian official support to exports through financing or refinancing, interest rate equalization, export credit insurance or any combination of these modalities is conditioned to the signature of this document, which is currently being revised. An updated version of the Statement of Commitment for Exporters is expected to be adopted soon.

Please describe any additional measures taken in relation to information provided to exporters/applicants:

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**Question 2**

Do you encourage exporters and, where appropriate, applicants, requesting official export credit support to develop, apply and document appropriate management control systems that combat bribery?

- Yes, always       Yes, sometimes (*please provide details below*)       No

*If yes:*

a) Please indicate how this is accomplished:

- text in the application form
- a stand-alone document is provided to applicants
- text in the general conditions of cover (*for export credit insurance and guarantees*)
- text in the credit agreement
- information posted on the organisation's web site
- customer publications (e.g. brochures, handbooks)
- other (please elaborate):

b) Please provide the text used to encourage exporters and, where appropriate, applicants, requesting official export credit support to develop, apply and document appropriate management control systems that combat bribery:

**Statement of Commitment for Exporters**

[the Exporter]

IX) it will implement an internal control system in conjunction with clear and precise accounting standards to ensure internal mechanisms to verify and demonstrate the proportionality and reasonableness of the payments made to representatives, proxies, mandataries and other persons or organizations with which it maintains related business ties, with a view to identifying possible illicit transactions;

X) it will provide guidance to its employees concerning the classification of the active bribery offense and traffic of influence, both in international commercial transactions, prescribed in articles 337-B and following of the Brazilian Penal Code through the formulation of a Code of Ethics setting out mechanisms to report the commission of any of the crimes against the Foreign Public Administration as established in the Brazilian Penal Code;

XI) it will implement, where it has not already done so, internal control practices and systems, including standards of conduct, with a view to combating the commission of the offense of active bribery and traffic of influence, both in international commercial transactions, prescribed in articles 337-B and following of the Brazilian Penal Code;

Comments/clarifications/additional information related to the answers provided above:

This fragment is part of the Statement of Commitment for Exporters, translated by CGU. As previously mentioned, an updated version of this document is expected to be adopted soon.

Page on SAIN website: <https://www.sain.fazenda.gov.br/links/compliance-no-sce>.

Please describe any additional measures taken in relation to exporter/applicant management control systems to combat bribery:


**Question 3**

Do you require exporters and, where appropriate, applicants, requesting official export credit support to provide an undertaking/declaration that neither they, nor anyone acting on their behalf, such as agents, have been engaged or will engage in bribery in the transaction?

- Yes, always       Yes, sometimes (*please provide details below*)       No

If Yes:

a) The requirement is communicated to exporters/applicants via:

- text in the application form
- a stand-alone document is provided to applicants
- text in the general conditions of cover (*for export credit insurance and guarantees*)
- text in the credit agreement
- information posted on the organisation's web site
- customer publications (e.g. brochures, handbooks)
- other (please elaborate):


b) The undertaking/declaration is obtained from exporters/applicants through:

- the application form
- a stand-alone document submitted by the exporter/applicant       at the time of application       before support is provided
- other (please elaborate):       at the time of application       before support is provided

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c) Please provide the text of the requirement and/or the undertaking/declaration provided by exporters/applicants:

<p><b>STATEMENT OF COMMITMENT FOR EXPORTERS</b></p> <p>Exporter: ..... (name)</p> <p>Subject: export of goods and/or services, in the amount of ..... to ..... (country) ..., (transaction information for purposes of identification)</p> <p>..... (name of the reporting exporter), ..... (qualification, National Registry of Legal Persons Number, address), through its undersigned legal representatives, hereinafter the Exporter, having executed (or the intention to execute) a commercial contract with ..... (name of the Importer) ....., hereinafter the Importer, in connection with the above enumerated exports, declares, under penalty of law, for purposes of receiving officially supported export credits (financing for exports/export credit insurance/interest rate equalization), the following:</p>
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I) it is aware of Brazil's adherence to the OECD Convention (Convention on Combating Bribery of Foreign Public Officials in International Commercial Transactions, signed in Paris on 17 December 1997), and enacted into Brazilian law through Decree 3678 of 30 November 2000;

II) it is aware that articles 337-B and following of the Brazilian Penal Code establish crimes against Foreign Public Administration, including corruption of foreign public official and traffic of influence, both in international commercial transactions;

III) it is aware that Law n. 12,846 of August 1<sup>st</sup>, 2013 provides for the objective liability, in administrative and civil spheres, of legal entities for the practice of acts against national or foreign public administrations;

IV) it has no knowledge as to the involvement of any person acting on the behalf of the enterprise, in its interest or benefit, in the export transaction abovementioned, which is eligible to receive ... (export financing from the National Economic and Social Development Bank – BNDES<sup>1</sup>/Export Financing Program - PROEX run by the Bank of Brazil S/A, in its capacity as agent of the National Treasury/Export Credit Insurance Coverage from the Export Guarantee Fund – FGE<sup>1</sup>) ..., in promising, giving or intending to give, offering or intending to offer any financial or other material advantage, directly or indirectly, to any foreign public official, including for purposes of obtaining a favorable decision in relation to its business transactions and, by extension, in the commission of the illicit acts related to the offense of bribery of foreign public officials prescribed in the Brazilian Penal Code;

V) it will comply, at all times, with the applicable anticorruption norms and regulations and communicate any fact or act subject to this Statement to the ... (BNDES/ABGF<sup>1</sup>/Bank of Brazil)... immediately upon learning of such fact or act, which could affect the situation declared in paragraph III regarding the commission of the illicit acts related to bribery of foreign public officials prescribed in the Brazilian Penal Code;<sup>1</sup>

VI) it is aware that in the event the Exporter or any person acting on behalf of the enterprise, in its interest or benefit, is convicted for practicing any of the crimes against foreign public administration established in articles 337-B and following of the Brazilian Penal Code, or held liable, civil or administratively, for the commission of the acts provided by Law n. 12,846/2013, the Exporter shall be subject to loss of export financing, from the National Economic and Social Development Bank – BNDES, from the Export Financing Program - PROEX run by the Bank of Brazil S/A, in its capacity as agent of the National Treasury and from the Export Credit Insurance Coverage from the Export Guarantee Fund – FGE and for a period of five (5) years from the sanction judgment regarding new export transactions;

VII) none of the persons involved in negotiating the export transaction is a defendant in a pending criminal proceeding before a Brazilian court for the offense of bribery of a foreign public official or has been convicted in the past five (5) years for a criminal offense against the Foreign Public Administration, in violation of the anticorruption provisions set forth the Convention to which paragraph I makes reference; as well as in violation of specific legislation.

VIII) it will, when so requested, identify and specify the persons acting in its name or on its behalf and under its instructions, as well as the existence and amounts of commissions and fees paid to agents involved in the export transaction to which this Statement refers;

IX) it will implement an internal control system in conjunction with clear and precise accounting standards to ensure internal mechanisms to verify and demonstrate the proportionality and reasonableness of the payments made to representatives, proxies, mandataries and other persons or organizations with which it maintains related business ties, with a view to identifying possible illicit transactions;

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X) it will provide guidance to its employees concerning the classification of the active bribery offense and traffic of influence, both in international commercial transactions, prescribed in articles 337-B and following of the Brazilian Penal Code through the formulation of a Code of Ethics setting out mechanisms to report the commission of any of the crimes against the Foreign Public Administration as established in the Brazilian Penal Code;

XI) it will implement, where it has not already done so, internal control practices and systems, including standards of conduct, with a view to combating the commission of the offense of active bribery and traffic of influence, both in international commercial transactions, prescribed in articles 337-B and following of the Brazilian Penal Code;

Note: The items IX, X e XI mentioned above describe proceedings to be conducted on the Exporter's own account and under his own responsibility, which may be examined eventually.

Finally, declares to be aware that acting in bad faith regarding the assumption of the commitments described in this Declaration is crime, prescribed in the article 299 of the Brazilian Penal Code.

Place and Date

Signature of the Legal Representative of the Exporter

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(identification of the person signing the Statement,

with indication of his or her management position in the legal person of the Exporter)

Comments/clarifications/additional information related to the answers provided above:

This Statement was translated by CGU. As previously mentioned, an updated version of this document is expected to be adopted soon.

Previously, the Statement of Commitment for Exporters was submitted before the export credit insurance was provided. As from March 1<sup>st</sup>, 2016, the Statement of Commitment for Exporters shall be submitted at the time of application.

Page on SAIN website: <https://www.sain.fazenda.gov.br/links/compliance-no-sce>.

Please describe any additional measures taken in relation to exporter/applicant declarations/undertakings:


**Question 4**

Do you verify and note<sup>1</sup> whether exporters, and where appropriate, applicants, are listed on the publicly available debarment lists of the following international financial institutions (IFIs): World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank?

Yes, always       Yes, sometimes (*please provide details below*)       No

*If Yes:*

a) Which actors associated with the transaction are subject to verification?

the applicant       at the time of application       before support is provided  
 the exporter(s)       at the time of application       before support is provided  
 other (*e.g. agents – please elaborate*)       at the time of application       before support is provided

Other: controlling shareholders, members of the Board of Directors, Supervisory Board and Executive Board of the exporter; any company member of its economic group *de facto* or *de jure*; and any natural and/or legal person acting on its behalf; and the lender.

b) Please indicate how the verification is achieved:

staff check the lists       at the time of application       before support is provided  
 exporter/applicant self-declaration       at the time of application       before support is provided  
 other (please elaborate):       at the time of application       before support is provided

Comments/clarifications/additional information related to the answers provided above:

The Form for Exporter asks if the exporter; its controlling shareholders, members of the Board of Directors, Supervisory Board and Executive Board; any company member of its economic group *de facto* or *de jure*; and any natural and/or legal person acting on its behalf are listed. Forms for the exporter and the lender are being applied for new transactions since 1<sup>st</sup> March 2016.

Besides, since 1<sup>st</sup> March 2016, for any new transaction, SAIN checks if the exporter and the lender (legal persons) are listed on the aforementioned debarment lists of international financial institutions and also on the National Registry of Inapt and Suspended Companies (CEIS) - maintained by CGU - at the time of the application.

Please describe any additional measures taken in relation to current or past debarment of exporters/applicants by other institutions:

<sup>1</sup> Such verification may take the form of a self-declaration from exporters and, where appropriate, applicants, as to whether they are listed on the publicly available IFI debarment lists.

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If the exporter or any natural or legal person representing it and/or acting in its interest and/or for its benefit is listed, an enhanced due diligence will be carried out.

**Question 5**

Do you require exporters and, where appropriate, applicants, to disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge in a national court or, within a five-year period preceding the application, have been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country?

Yes, always       Yes, sometimes (*please provide details below*)       No

*If Yes:*

a) Please indicate how requirement is met:

- the application form provides for such disclosures to be made
- a stand-alone document requiring such disclosures must be provided by the exporter/applicant       *at the time of application*       *before support is provided*
- other (please elaborate):       *at the time of application*       *before support is provided*

Form for the Exporter to be submitted at the time of the application. Forms for the exporter and the lender are being applied for new transactions since 1<sup>st</sup> March 2016.

Comments/clarifications/additional information related to the answers provided above:

The Statement of Commitment for Exporters (paragraph VII) requires that the exporter declares that none of the persons involved in negotiating the exporter transaction is a defendant in a pending criminal proceeding before a Brazilian court for the offense of bribery of a foreign public official or has been convicted in the past five (5) years for a criminal offense against the Foreign Public Administration, in violation of the anticorruption provisions set forth the Convention to which paragraph I makes reference; as well as in violation of specific legislation.

Besides that, the Form for Exporter, which is being applied for new transactions since 1<sup>st</sup> March 2016, asks if the exporter - itself or through its controlling shareholders, members of the Board of Directors, Supervisory Board and/or Executive Board - any company member of its economic group de facto or de jure, or any natural and/or legal person acting on its behalf are currently under charge AND/OR within five (05) years preceding the application, was convicted or been subjected to equivalent administrative measures for Acts of Corruption; Crimes Committed by Individuals Against a Foreign Public Administration Crimes of “[Money] Laundering” and Concealment of Properties, Rights and Values; and/or Acts of Terrorism Financing in any Brazilian or foreign court.

Please describe any additional measures taken in relation to exporter/applicant disclosure of charges and/or convictions of bribery:

Depending on the information provided by the exporter, an enhanced due diligence may be carried out.

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**Question 6**

Are agents' commissions (included in the export contract) eligible for official support?

Yes, always       Yes, sometimes (*please provide details below*)       No

*If Yes:*

a) Do you apply a ceiling to agents' commissions for which official support is provided?

Yes, always       Yes, sometimes (*please provide details below*)       No

*If Yes:*

b) Please provide details on the ceiling(s) applied:

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c) What is the rationale for imposing a ceiling on agents' commissions?

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Comments/clarifications/additional information related to the answers provided above:

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Please describe any additional measures taken in relation to the eligibility for official support of agents' commissions:


**Question 7**

Do you require that details be provided in respect of agents' commissions associated with the transaction?

Yes, always     Yes, sometimes (*please provide details below*)     No

*If yes:*

a) Do you require the **amounts** of commissions to be disclosed?

Yes, always     Yes, sometimes (*please provide details below*)     No

*If yes, the amounts of commissions must be disclosed:*

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):


b) Do you assess whether the **level** of commissions is consistent with standard business practice?

Yes, always     Yes, sometimes (*please provide details below*)     No

*If yes, the assessment is made:*

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):


c) Do you require the **purpose** of commissions to be clearly identified?

Yes, always     Yes, sometimes (*please provide details below*)     No

*If yes, the purpose is identified:*

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):

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d) Do you require that details (*e.g.* name, company, address) be provided in respect of the **agent(s)** to whom commissions are paid?

Yes, always       Yes, sometimes (*please provide details below*)       No

*If yes, the details must be provided:*

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):


Comments/clarifications/additional information related to the answers provided above:

The Form for Exporter, which is being applied for new transactions since 1 <sup>st</sup> March 2016, asks information in respect of agents' commissions associated with the transaction, including the amounts and the purpose of commissions in addition to details in respect of the agent(s) to whom commissions are paid. Besides, there is a complementary question asking if the commissions and/or honoraries paid to the agent represent more than 5% of the commercial contract value. In this case, the exporter has to demonstrate that the level of commissions is consistent with standard business practice (there is no additional assessment to check if the demonstration provided by the exporter is correct).
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Please describe any additional measures taken in relation to the collection of information on and/or review of agents' commissions:

Depending on the information provided by the exporter, an enhanced due diligence may be carried out.
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**Question 8**

Have you developed and implemented procedures to disclose to your law enforcement authorities instances of credible evidence<sup>2</sup> of bribery?

Yes                       No

*If Yes:*

Please provide a short description of your policies and procedures:

ABGF /SAIN will notify the law enforcement authorities at any time if there is evidence of Acts of Corruption; Crimes Committed by Particular Against the Foreign Public Administration; Crimes of "Laundering" or Concealment of Goods, Rights and Values; and/or Acts of Terrorism Financing. The Compliance Procedures Manual (adopted by SAIN, ABGF and Bank of Brazil) provides an illustrative list of authorities which may be contacted for each act/crime, including CGU, the Prosecutor's Office (*Ministério Público* - MP), the Brazilian Central Bank (*Banco Central do Brasil* – BCB) and the Council of Control of Financial Activities (*Conselho de Controle de Atividades Financeiras* – COAF), among others.

Comments/clarifications/additional information related to the answers provided above:


Please describe any additional measures taken in relation to the disclosure of information on possible instances of bribery to law enforcement authorities:

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<sup>2</sup> As defined in the OECD Council Recommendation on Bribery and Officially Supported Export Credits.

**SECTION II – ACTIONS TAKEN IN RELATION TO A SPECIFIC APPLICATION BEFORE CREDIT, COVER OR OTHER SUPPORT HAS BEEN APPROVED**

**Question 9**

If, **before** credit, cover or other support has been approved, you become aware that an exporter and, where appropriate, applicant (or anyone acting on their behalf in connection with the transaction) **are listed on any of debarment lists that you verify**, what action(s) are taken?

Enhanced due diligence is undertaken.  *always*  *sometimes (please provide details below)*

Other (please elaborate):  *always*  *sometimes (please provide details below)*


*If enhanced due diligence is undertaken:*

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

Yes, always  Yes, sometimes (*please provide details below*)  No

b) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has taken appropriate internal corrective and preventative measures after having been debarred?

Yes, always  Yes, sometimes (*please provide details below*)  No

c) How is the application treated?

The approval of the application is suspended pending the outcome of the enhanced due diligence process.  *always*  *sometimes (please provide details below)*

No fixed policy.

Other (please elaborate):  *always*  *sometimes (please provide details below)*


Comments/clarifications/additional information related to the answers provided above:

In the past, the abovementioned measures were applied on a case by case basis. Since 1 <sup>st</sup> March 2016, when applicable, these procedures will be followed, according to the provisions of the newly implemented Compliance Procedures Manual.
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**Question 10**

If, **before** credit, cover or other support has been approved, you become aware that an exporter and, where appropriate, applicant (or anyone acting on their behalf in connection with the transaction) **is currently under charge in a national court for violation of laws against bribery of foreign public officials of any country**, what action(s) are taken?

Enhanced due diligence is undertaken.  *always*  *sometimes (please provide details below)*

Other (please elaborate):  *always*  *sometimes (please provide details below)*


*If enhanced due diligence is undertaken:*

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

Yes, always  Yes, sometimes (*please provide details below*)  No

b) How is the application treated?

The approval of the application is suspended pending the outcome of the enhanced due diligence process.  *always*  *sometimes (please provide details below)*

No fixed policy.

Other (please elaborate):  *always*  *sometimes (please provide details below)*


Comments/clarifications/additional information related to the answers provided above:

In the past, the abovementioned measures were applied on a case by case basis. Since 1 <sup>st</sup> March 2016, when applicable, these procedures will be followed, according to the provisions of the newly implemented Compliance Procedures Manual.
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**Question 11**

If, **before** credit, cover or other support has been approved, you become aware that an exporter/applicant (or anyone acting on their behalf in connection with the transaction) **has been convicted in a national court or has been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period**, what actions are taken?

- Enhanced due diligence is undertaken.       *always*       *sometimes (please provide details below)*
- Other (please elaborate):       *always*       *sometimes (please provide details below)*


*If enhanced due diligence is undertaken:*

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

- Yes, always       Yes, sometimes (*please provide details below*)       No

b) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has taken appropriate internal corrective and preventative measures after having been convicted?

- Yes, always       Yes, sometimes (*please provide details below*)       No

c) How is the application treated?

- The approval of the application is suspended pending the outcome of the enhanced due diligence process.       *always*       *sometimes (please provide details below)*

No fixed policy.

- Other (please elaborate):       *always*       *sometimes (please provide details below)*


Comments/clarifications/additional information related to the answers provided above:

In the past, the abovementioned measures were applied case by case. Since 1 <sup>st</sup> March 2016, when applicable, these procedures will be followed.
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**Question 12**

If, **before** credit, cover or other support has been approved, you have reason to believe that **bribery may be involved in the transaction** (e.g. press reports from a reputable source, information provided by participants in the transaction) related to the award of the export contract, what action(s) are taken?

Enhanced due diligence is undertaken.  *always*  *sometimes (please provide details below)*

Other (please elaborate):  *always*  *sometimes (please provide details below)*


*If enhanced due diligence is undertaken:*

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

Yes, always  Yes, sometimes (*please provide details below*)  No

b) How is the application treated?

The approval of the application is suspended pending the outcome of the enhanced due diligence process.  *always*  *sometimes (please provide details below)*

No fixed policy.

Other (please elaborate):  *always*  *sometimes (please provide details below)*


Comments/clarifications/additional information related to the answers provided above:

In the past, the abovementioned measures were applied on a case by case basis. Since 1 <sup>st</sup> March 2016, when applicable, these procedures will be followed, according to the provisions of the newly implemented Compliance Procedures Manual..
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**Question 13**

If, **before** credit, cover or other support has been approved, you become aware of **credible evidence that bribery was involved in the award of the export contract for the transaction**, what action(s) are taken?

- Law enforcement authorities are informed.  *always*  *sometimes* (please provide details below)
- Enhanced due diligence is undertaken.  *always*  *sometimes* (please provide details below)
- Support is not provided for the transaction.  *always*  *sometimes* (please provide details below)
- Other (please elaborate):  *always*  *sometimes* (please provide details below)

*If enhanced due diligence is undertaken:*

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

- Yes, always  Yes, sometimes (please provide details below)  No

b) How is the application treated?

- The approval of the application is suspended pending the outcome of the enhanced due diligence process.  *always*  *sometimes* (please provide details below)

No fixed policy.

- Other (please elaborate):  *always*  *sometimes* (please provide details below)

*If investigative authorities are informed:*

c) How is the application treated?

- The approval of the application is suspended pending the outcome of the review by law enforcement authorities.  *always*  *sometimes* (please provide details below)

No fixed policy.

- Other (please elaborate):  *always*  *sometimes* (please provide details below)

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Comments/clarifications/additional information related to the answers provided above:

In the past, the abovementioned measures were applied on a case by case basis. Since 1 <sup>st</sup> March 2016, when applicable, these procedures will be followed, according to the provisions of the newly implemented Compliance Procedures Manual.
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**SECTION III – ACTIONS TAKEN IN RELATION TO A SPECIFIC TRANSACTION AFTER CREDIT, COVER OR OTHER SUPPORT HAS BEEN APPROVED**

**Question 14**

If, **after** credit, cover or other support has been approved, you have reason to believe that **bribery may be involved in the transaction** (e.g. press reports from a reputable source, information provided by participants in the transaction) related to the award of the export contract, what action(s) are taken?

- Law enforcement authorities are  *always*  *sometimes* (please provide details below) informed.
- Enhanced due diligence is undertaken.  *always*  *sometimes* (please provide details below)
- Other (please elaborate):  *always*  *sometimes* (please provide details below)

Comments/clarifications/additional information related to the answers provided above:

In a specific situation, the reasons will be evaluated to assess if they are credible and shall be informed to the authorities.

**Question 15**

If, **after** credit, cover or other support has been approved, you become aware of **credible evidence that bribery was involved in the award of the export contract for a transaction**, what action(s) are taken?

- Law enforcement authorities are  *always*  *sometimes* (please provide details below) informed.
- Other (please elaborate):  *always*  *sometimes* (please provide details below)

Comments/clarifications/additional information related to the answers provided above:

**Question 16**

If, **after** credit, cover or other support has been approved, **it is proven that bribery was involved in the award of the export contract for a transaction**, what action(s) are taken?

Law enforcement authorities are informed.  always  sometimes (please provide details below)  
(only in relation to a conviction outside the Member's country)

Loan disbursements are interrupted.  always  sometimes (please provide details below)

Cover is invalidated (for export credit insurance and guarantees).  always  sometimes (please provide details below)

Claims are not indemnified (for export credit insurance and guarantees).  always  sometimes (please provide details below)

Recourse is sought for amounts disbursed.  always  sometimes

Recourse is sought for claims that have already been paid (for export credit insurance and guarantees).  always  sometimes (please provide details below)

Access to official support is denied for a specified period of time.  always  sometimes (please provide details below)

Other (please elaborate):  always  sometimes (please provide details below)


Comments/clarifications/additional information related to the answers provided above:

The adoption of some of the abovementioned measures depend on the contractual provisions in place for each transaction.
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**SECTION IV – PAST EXPERIENCE**

**Question 17**

Please indicate by marking the appropriate boxes if you have had any experience with the following scenarios related to the time **before** credit, cover or other support has been approved:

	<i>You became aware that an exporter/ applicant was on one of the debarment lists that you verify, and...</i>	<i>You became aware that an exporter/ applicant was under charge in a national court for bribery, and...</i>	<i>You became aware that an exporter/ applicant had been convicted in a national court or had been subject to equivalent national administrative measures for bribery, and...</i>	<i>You have reason to believe that bribery may be involved in the transaction (e.g. press reports from a reputable source, information provided by participants in the transaction), and...</i>	<i>You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and...</i>
... you notified law enforcement authorities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... you undertook enhanced due diligence.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you decided not to provide support for the transaction.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you suspended approval of the application pending the outcome of the enhanced due diligence	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you suspended approval of the application pending the outcome of the	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

... [other].	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
... [other].	—		—		—		—		—

## BRAZIL (ABGF)

Please describe the circumstances of the actual incidents noted in the preceding table.<sup>3</sup> Please also provide information on any actions that were taken as a result of situations not listed in the table (*e.g.* Members who review the details of agents' commissions as part of the standard application process should provide information on any actions that were taken as a result of the review of commissions).

1 - In 2015, some diligence measures were taken regarding the official support for exporters whose presidents, directors, etc. are/were been investigated or under charge by the "Car Wash" Operation (*Operação Lava Jato*):

- a) monitoring the complaints, investigations, legal processes and decisions (including the leniency agreements);
- a) meetings with the lenders to confirm if there were new information on the case and which measures they would apply;
- b) SAIN had a meeting with the Office of the Comptroller General (*Controladoria-Geral da União - CGU*) to request additional information on the investigations, but it was not possible to get feedback since it was classified;
- c) researching on the World Bank Group and the Multilateral Investment Guarantee Agency (MIGA) to check if there were a formal recommendation of denying support to the companies investigated in this operation – based on information received from a bank that this orientation would exist;
- d) consulting the World Bank Listing of Ineligible Firms & Individuals and the National Registry of Inapt and Suspended Companies (CEIS); and
- e) when deemed necessary, consulting the Committee for Export Finance and Guarantee (COFIG) on the measures to be taken.

2 - Besides that, we became aware through a press report from a reputable source that an exporter was being investigated abroad for corruption. The measures taken were:

- a) use of the Brazilian representation abroad via Ministry of External Relations to verify the authenticity of information and to confirm if the complaints were related to the corruption of foreign public officials; and
- b) consultation to PGFN asking if the abovementioned due diligence would be enough to verify the authenticity of information and if it was legal to maintain official support to the company supposedly under investigation, taking into account the Statement of Commitment for Exporters.

In both cases, the operation's approval was suspended until the due diligence process was finished.

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<sup>3</sup> It is recognised that Members may not be able to provide certain information in respect of a given transaction, *e.g.* if the transaction is subject to an ongoing investigation or prosecution or if the information is commercially confidential.

**Question 18**

Please indicate by marking the appropriate boxes if you have had any experience with the following scenarios related to the time **after** credit, cover or other support has been approved:

	<i>You became aware that an exporter/ applicant was under charge in a national court for bribery, and...</i>	<i>You became aware that an exporter/ applicant had been convicted in a national court or had been subject to equivalent national administrative measures for bribery, and...</i>	<i>You have reason to believe that bribery may be involved in the transaction (e.g. press reports from a reputable source, information provided by participants in the transaction), and...</i>	<i>You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and...</i>	<i>It was proven that bribery was involved in the award of the export contract for a transaction, and...</i>
... you notified law enforcement authorities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you interrupted loan disbursements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you invalidated export credit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you did not indemnify a claim.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you sought recourse for disbursed loan amounts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you sought recourse for claims that had already been paid.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...denied access to official support for a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... [other].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Due diligence was undertaken	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... [other].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Please describe the circumstances of the actual incidents noted in the preceding table.<sup>4</sup> Please also provide information on any actions that were taken as a result of situations not listed in the table.

We became aware through a press report from a reputable source that one exporter was being investigated for corruption of foreign public officials. In this case, we sent a formal document demanding explanations and a meeting between the exporter and the guarantor was scheduled to clarify some doubts. Besides the meeting, the exporter presented its compliance program and the overview of the investigation was discussed. They informed us that: (i) one investigation was closed with no crimes appointed by the local authorities; (ii) in a second case, in Brazil, there is an ongoing process whose details were classified; (iii) in a third country, no due process was established. Regarding the process in Brazil, related to corruption in international business transactions and money laundering, the exporter informed that some of the involved no longer work for the company and some of them are still there following recommendations of the Law authorities responsible for the investigation.

While the legal process is still ongoing, the cover could not be invalidated, neither the guarantor could seek recourse for claims that had already been paid or deny access to official support for a specified period. Such measures may only be taken if there is a final and non-appealable decision.

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<sup>4</sup> See footnote 3.

## SECTION V – PRACTICAL APPLICATION OF KEY TERMS

### **Question 19**

Please provide a detailed description of your **Enhanced Due Diligence Procedures**, addressing, *inter alia*:

- Whether they comprise verification that the exporter/applicant has in place appropriate management control systems that combat bribery.
- Whether the procedures seek to verify whether an exporter/applicant that has been debarred by an IFI (or any other entity checked under your procedures) or convicted of bribery has taken appropriate internal corrective and preventative measures after having been debarred or convicted.
- The treatment of agents' commissions under the procedures.

The enhanced due diligence will be carried out if:

1. the exporter informs (through the Form for Exporter) that itself - in its own name or through its controlling shareholders, members of the Board of Directors, Supervisory Board and/or Executive Board - any company member of its economic group *de facto* or *de jure*; and/or any natural and/or legal person acting on its behalf:
  - a) is currently under charge in any Brazilian or foreign court for Acts of Corruption; Crimes Committed by Individuals Against a Foreign Public Administration Crimes of “[Money] Laundering” and Concealment of Properties, Rights and Values; and/or Acts of Terrorism Financing; and/or
  - b) within five years preceding the request, was convicted in a Brazilian or foreign court or been subjected to equivalent administrative measures for Acts of Corruption; Crimes Committed by Individuals Against a Foreign Public Administration Crimes of “[Money] Laundering” and Concealment of Properties, Rights and Values; and/or Acts of Terrorism Financing;
2. the exporter or any natural or legal person representing it and/or acting in its interest or for its benefit appears in the World Bank public lists of disqualification and/or in the National Registry of Inapt and Suspended Companies (CEIS);
3. there are reasons to believe (for example, by the identification of red flags, press reports from a reputable source or information provided by participants in the transaction) that Acts of Corruption; Crimes Committed by Individuals Against a Foreign Public Administration Crimes of “[Money] Laundering” and Concealment of Properties, Rights and Values; and/or Acts of Terrorism Financing were practiced in the transaction or that there is a potential risk of image/reputation for the members of the system responsible for the concession of the official support, due to any possible non-compliance of the exporter and/or the lending bank.

The enhanced due diligence will be based on the following procedures, among others deemed as appropriate:

1. gathering information using as sources, without excluding others: media and databases; national and international governmental institutions, including via Brazilian representation abroad; other

## BRAZIL (ABGF)

actors involved in the transaction - exporter, lender, ECAs, law firms, compliance departments, etc;

2. verifying whether the exporter has in place appropriate management control systems to deal with possible that Acts of Corruption; Crimes Committed by Individuals Against a Foreign Public Administration Crimes of “[Money] Laundering” and Concealment of Properties, Rights and Values; and/or Acts of Terrorism Financing. The examination may be carried out by requesting meetings with the compliance department of the exporter and/or requesting the auditing findings of the compliance program adopted, reported in the question III of the Form for Exporter; and
3. verifying which preventive and corrective measures were taken in the cases provided for in item d, sub-items 1 and 2 (answers to the questions I and II of the Form for Exporter, respectively). The examination may be carried out by requesting the exporter to provide information and documents regarding any measures taken.

### **Question 20**

Please describe how the term **Credible Evidence** is applied in practice under your system (*e.g.* who makes the assessment). Any Member who has adopted a definition which is broader (*i.e.* that sets a lower threshold) than the definition provided in footnote 5 of the OECD Council Recommendation on Bribery and Officially Supported export Credits should provide its definition.

We adopt the definition of the term “credible evidence” provided in the OECD Recommendation. ABGF and the SAIN assess if a fact is considered credible evidence, they also may consult COFIG when deemed necessary.

### **Question 21**

Please describe how the term **national court** is applied under your system (*i.e.* does it apply to any national court, or is it limited to certain national courts such as your own and/or or the national courts of the buyer/borrower country).

We adopt a broad definition of the term “national court” as any Brazilian or foreign court.

## SECTION VI - FURTHER MEASURES

### **Question 22**

Are you considering any further general measures to deter bribery and/or changes to your policies and practices described in the survey?

Yes       No

Comments on measures and/or actions under consideration:

Enhanced compliance procedures are described in the newly implemented Compliance Procedures Manual, which results from the work of the Anti-Bribery Working Group established under the Committee for Export Finance and Guarantee (COFIG), in 2015. These procedures include measures not only for combating bribery of foreign public officials, but also, in a broad sense: Acts of Corruption; Crimes Committed by Individuals Against a Foreign Public Administration Crimes of “[Money] Laundering” and Concealment of Properties, Rights and Values; and/or Acts of Terrorism Financing.

Besides that, SAIN and ABGF just established reporting channels to receive complaints related to compliance and procedures to report evidence of the abovementioned acts to the Brazilian law enforcement authorities. They are also studying the possibility of including compliance provisions in the Export Credit Insurance policies.

### **Question 23**

Would you be prepared to exchange information with other ECG Members about suspected and/or proven instances of bribery related to specific officially supported export credit transactions?

Yes       No

Comments:

On a case by case basis, and taking into consideration the restrictions regarding confidential information.

